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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUL 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Replacement of Part 90 by)
Part 88 to Revise the)
Private Land Mobile Radio)
Services and Modify the)
Policies Governing Them)

PR Docket No. 92-235

To: The Commission

**REPLY COMMENTS
OF THE
LAND MOBILE COMMUNICATIONS COUNCIL**

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S U M M A R Y

The Land Mobile Communications Council ("LMCC") filed its "Consensus Plan" in this proceeding on April 28, 1993. LMCC is pleased to note that this Consensus Plan was widely supported by the parties filing comments on May 28, 1993.

Based on a review of the comments filed in this proceeding, LMCC believes that any ultimate move to very narrowband channels, if at all, should be toward 6.25 kHz rather than 5 kHz. The vast majority of the commenters agree with this approach. LMCC urges the Commission to reject any plan which posits, as its ultimate objective, 5 kHz channel bandwidths.

LMCC's Consensus Plan was predicated on mandatory implementation of narrower bandwidth channels for both the 421-512 MHz and 150-174 MHz bands in the year 2004. LMCC notes that there is near unanimity in the comments on this timeframe for conversion to narrower bandwidth channels.

LMCC's proposed "safe harbor" tables are an effort to remedy the overly restrictive power limits proposed in this proceeding. The comments in this proceeding support LMCC's desire to ensure that the permissible power limits are compatible with the actual requirements of licensees' operating systems.

The safe harbor tables and the Commission's EUO proposal are not inconsistent. However, certain modifications will have to be made in the Commission's EUO proposal to ensure that it is compatible with the safe harbor tables.

LMCC believes that the EUO mileage separations should be flexible. Under LMCC's plan, EUO licensees would have enforceable rights in the separations distances listed in the safe harbor tables as long as they obtained concurrences from all co-channel licensees in the area. In LMCC's view, the practical effect of employing the safe harbor tables is that EUO proponents will have to obtain co-channel concurrences over a radius dependent on the facilities of other co-channel neighbors.

LMCC urges the Commission to disregard the views expressed by the Association for Maximum Service Television, Inc. ("AMST") in this proceeding. AMST's comments are self-serving and reflect little understanding of the nature of the private land mobile radio services.

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**REPLY COMMENTS
OF THE
LAND MOBILE COMMUNICATIONS COUNCIL**

The Land Mobile Communications Council ("LMCC") hereby respectfully submits these Reply Comments responsive to comments filed in the above-referenced proceeding.

I. BACKGROUND

1. On April 28, 1993, the Land Mobile Communications Council filed its "Consensus Plan" with the Commission in response to the FCC's Notice of Proposed Rule Making in the above-referenced proceeding.¹ In its Consensus Plan, LMCC addressed four principal points: (a) the proposal to introduce narrow bandwidth channels in the 421-512 MHz and

¹ Notice of Proposed Rule Making adopted October 8, 1992, 7 FCC Rcd. 8105 (1992) (hereinafter "Notice").

150-174 MHz bands; (b) appropriate limits on permissible power; (c) implementation of exclusive assignments in the 450-470 MHz and 150-174 MHz bands; and (d) the proposal to allocate frequencies for "innovative shared use".

2. LMCC's recommendation for implementation of "safe harbor" tables specifying maximum Effective Radiated Power levels at both the 450-470 MHz and 150-174 MHz bands received broad support in the comments filed in this proceeding. The Commission, however, has asked for further details on how the safe harbor tables would interrelate with the "Exclusive Use Overlay" proposal set forth in the Notice. Accordingly, LMCC will address that issue, as well as other points of interest, in these Reply Comments.

II. REPLY COMMENTS

A. The Commission Should Not Implement Any Plan For Narrower Channels Which Is Premised On 5 kHz Bandwidths.

3. One of the prominent issues addressed in LMCC's Consensus Plan was the conversion to narrower channels in both the 421-512 MHz and 150-174 MHz bands. LMCC recommended a Consensus Plan for the 421-512 MHz band and two alternative options for the 150-174 MHz band. LMCC's

Consensus Plan offered a progression for conversion to
narrower bandwidths in the 421-512 MHz range. IMCC believes

- g. Effective January 1, 2004, all licensees not employing true 12.5 kHz equipment or equivalent efficiency could continue to operate but such operations would be on a non-interference basis.

4. For the 150-174 MHz band, LMCC's Consensus Plan options are as follows:

Option A

- a. Effective January 1, 1994, licensees on full power channels would have the option of employing true 12.5 kHz bandwidth equipment on a voluntary basis.
- b. Effective January 1, 1994, the Commission would establish a new 12.5 kHz frequency plan

advance of January 1, 2004 on a coordinated basis with notification to all licensees within the affected frequency block.

- h. Effective April 1, 2004, the Commission would begin licensing operations on the unassigned seventh frequency within each block of six existing frequencies. License assignments would be permitted on each of the seventh frequencies before April 1, 2004 on a coordinated basis where users in a geographic area have converted to 12.5 kHz equipment and are operating on the 12.5 kHz channel centers.

Option B

- a. Effective January 1, 1994, a band plan based on 6.25 kHz channelization would be incorporated into the rules for voluntary use by licensees.
- b. By January 1, 1999, the Commission would commence a follow-up rule making to review and confirm the January 1, 2004 timetable for implementation of 6.25 kHz channelization.
- c. Effective January 1, 2004, all equipment type accepted by the Commission (other than for use on designated paging channels) must be capable of operating on true 6.25 kHz bandwidths or with equivalent efficiency.
- d. Effective January 1, 2004, all licensees not employing true 6.25 kHz equipment or equivalent efficiency could continue to operate but such operations would be on a non-interference basis.
- e. Licensees would be allowed to move to the newly designated 6.25 kHz frequencies in advance of January 1, 2004 on a coordinated basis with notification to all licensees within the affected frequency block.

5. LMCC is pleased to note the widespread support

adopted this position in recognition of the need for "a graceful transition to accommodate the need for gradual system changeout, utilization of imbedded investment and sufficient planning cycles for system replacement."

8. The comments reflect near unanimous agreement with the conversion timeframe recommended in the Consensus Plan. The vast majority of commenting parties support a transition plan that will permit realistic amortization of existing equipment and minimize the disruption that would otherwise result from an abrupt conversion deadline. Accordingly, LMCC urges the Commission to adopt the year 2004 as the mandatory deadline for users' initial conversion to narrower bandwidth channels.

C. "Exclusive Use Overlay" Represents An Opportunity, Not A Mandate.

9. The Commission's "Exclusive Use Overlay" or "EUO" proposal was developed in response to comments in PR Docket No. 91-170. In that proceeding, the Commission found that "most commenters favor some sort of channel exclusivity."³ With that in mind, the Commission set out to provide an option for channel exclusivity in Docket No. 92-235, and the

³ Notice at paragraph 11.

EVO option is the result of that effort. The Notice emphasizes that the "EVO option is an opportunity to obtain exclusivity."⁴

10. The proposed new Section 88.175 addresses the overall framework for the EVO option. That rule states that "assignments may be limited on certain channels in a specific geographic area. This may result in a licensee having channel exclusivity in that geographic area." Clearly, under the Commission's proposal, exclusive use is an option that may be available to licensees who are able to obtain the concurrence of affected co-channel licensees.

D. LMCC's "Safe Harbor" Concept Matches ERP Levels With Service Area Requirements.

11. LMCC's proposed safe harbor tables represent an effort to remedy what LMCC's members perceived as a fundamental defect in the Notice. The Commission proposed to restrict maximum facilities at 300 watts ERP with an antenna height at 60 meters above average terrain. In LMCC's view, as well as that of the vast majority of commenters in this proceeding, the proposed power limits were incompatible with and contrary to the diversity of

⁴ Notice at paragraph 12 (emphasis in original).

service areas and operating requirements of licensees in the Private Land Mobile Radio Services.

12. A single set of limits was proposed, based not on licensees' coverage requirements but rather on a Commission desire for a simplistic 50-mile reuse criterion. In many cases, the proposal would limit licensees to a 5-watt base station power level. Further, the Commission's proposal would apply such overly restrictive limits to existing as well as new systems, seriously impacting users' coverage and cost.

13. LMCC proposed, instead, its safe harbor tables to provide the Commission with some means of ensuring that applicants have properly matched their power requirements with their service area requirements. The intent underlying the safe harbor tables was to inject a realistic view of licensees' diverse coverage and ERP requirements into the licensing process.

E. The Comments Indicate A Need For Realistic Power Limits.

14. By and large, the commenters in this proceeding are supportive of the Commission's efforts to provide an

option for licensees to attain exclusive use of their assigned channel. However, there is no indication that the commenters are either willing or able to sacrifice reasonable service areas to facilitate the EUO option. The Comments of the American Petroleum Institute ("API") are typical. API states that it "supports adoption of the Exclusive Use Overlay ("EUO") concept."⁴ "However," API states, "exclusivity should be granted for a designed system regardless of whether it is for limited refinery areas, or along a 1,500-mile pipeline right-of-way. It cannot be over emphasized that mobile radio systems used in the petroleum and natural gas industries do not fit standard patterns."⁵

15. Other commenters echo API's concern that any system for obtaining exclusive use must be compatible with, and subordinate to, the actual requirements of licensees' operating systems. The Notice states that "exclusivity makes technical flexibility more viable."⁶ However, the overwhelming sense gained from a review of the comments is that the primary technical flexibility desired by users is

⁴ API Comments, paragraph 12.

⁵ Id.

⁶ Notice at paragraph 11.

the ability to operate at power levels that reasonably accommodate actual system requirements.⁷

F. The "Safe Harbor" Concept Is Compatible With Exclusive Use.

16. Concern has been expressed that the safe harbor concept is not compatible with the implementation of the Exclusive Use Overlay and would eliminate the benefits of the EUO. However, as proposed by LMCC, the safe harbor tables are both consistent with the EUO proposal and directly inter-related to it. The Commission's proposed rules for EUO set a definite mileage criteria of fifty (50) miles for exclusive assignments. This rigid mileage criterion for EUO is the same as the standard 50-mile spacings on which the Commission's power and height proposals were based.

⁷ In support of its EUO proposal, the Commission points out in the Notice that the Joint Commenters [SIRSA (now "ITA"), NABER, API, AMTA, TELFAC, and CICS], in their Docket No. 91-170 Comments, "state that they 'agree wholeheartedly . . . that exclusive channel assignments provide a strong stimulus for licensees to employ efficient modes of operation.'" However, had these same Joint Commenters been aware that, as a result of the exclusive use option, they would have had to sustain dramatic reductions in permissible ERP levels, they would not, and could not, have supported the exclusive use alternative.

17. LMCC believes that the EUO mileage separations should be flexible. These EUO mileage separations would be based on the flexible safe harbor tables set forth in the Consensus Plan. EUO would simply be a method of enforcing the mileage separations found in the tables against new systems. Under LMCC's plan, EUO licensees would have enforceable rights in the separations distances listed in the tables as long as they obtained concurrences from all co-channel licensees in the area. No new system could be constructed in the licensee's EUO area unless it was separated by at least as much distance as specified in the

19. A 2-mile system, therefore, could be constructed in the 130-mile area if it was at least 50 miles (as specified in the safe harbor table) from the EUO licensee. Thus, even though the licensee's EUO radius is 130 miles, it

between co-channel base stations as indicated in the Table "X" located in Section 88.429."

21. In LMCC's view, the practical effect of employing the safe harbor tables is that EDO proponents will have to

22. There may be further concern that permitting a licensee to obtain exclusivity of a frequency or frequencies over an extensive area, such as a 130-mile radius with a 20-mile service area system, may not be considered to be consistent with the goals of spectrum efficiency enunciated in this docket. However, the Commission has proposed to provide even more extensive geographic areas for the "exclusive" use of 800 MHz Specialized Mobile Radio ("SMR") frequencies by one licensee.⁹ The Commission tentatively concluded, in the "EMSP Docket," that even without the implementation of advanced spectrum efficient technologies, such "exclusive" re-use of a frequency was warranted to the exclusion of other licensees. Accordingly, the mere size of the area in which exclusivity of a frequency is accorded does not necessarily result in inefficient use of the spectrum.

H. The Commission Must Disregard The Self-Serving Comments Filed By The Association for Maximum Service Television.

23. The Association for Maximum Service Television, Inc. ("AMST") filed comments in this proceeding suggesting that the broadcast community is entitled to return of the

⁹ Notice of Proposed Rule Making (FCC 93-257), PR Docket No. 93-144, 8 FCC Rcd. _____ (1993) ("EMSP Docket").

television broadcast spectrum that land mobile users have been "borrowing" since 1970. AMST also urged the Commission to extend the refarming effort to the spectrum above 512 MHz. AMST notes that the 40 megahertz of spectrum used by land mobile stations in the 800 MHz band represents more than 60 percent of the total land mobile spectrum.¹⁰

24. LMCC believes that a response is in order, since the AMST comments highlight radical discrepancies between efficient private land mobile use of the spectrum and outmoded broadcast television use. LMCC trusts that the Commission will not extend serious consideration to AMST's plea for return of the spectrum "borrowed" in Docket No. 18261. AMST has intervened repeatedly in private radio proceedings, at all times pushing studies which wildly underestimate the market growth and technological development of private radio. Most recently, however, it serves AMST's purpose to foster studies purporting to show dramatic gains in efficiencies attainable in the land mobile spectrum, with no corresponding costs to land mobile users.

¹⁰ Another way of looking at the allocation is simply to note that the 40 megahertz of land mobile spectrum represents fewer than seven TV channels, of which there are a total of 68. These 68 TV channels consume 408 megahertz of spectrum. At least with land mobile, the spectrum is being put to use, as compared to television where spectrum is merely used to duplicate delivery of programming that most residents of this

LMCC recommends that the broadcasters instead focus their attention on improving the efficiency of the 40-year old technology in the television industry rather than "armchair

WHEREFORE. THE PREMISES CONSIDERED. the Land Mobile